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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/796,714	03/09/2004	James Richard Warner	Warner6	1790
7590	10/07/2004		EXAMINER	
James Richard Warner 1530 Turf Dr. Henderson, NV 89015			LE, TAN	
			ART UNIT	PAPER NUMBER
			3632	

DATE MAILED: 10/07/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/796,714

Applicant(s)

WARNER, JAMES RICHARD 

Examiner

Tan Le

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 March 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>3/09/04</u> . | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This is the first office action for serial number 10/796,714. This application contains 10 claims numbered 1-10.
2. IDS submitted 3/09/04 has been considered.

### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter, which the applicant regards as his invention.

Claims 1-10 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The following limitations lack antecedent basis:

Claim 1: "the collapsed position" in line 2; "the ends" in line 3; "said center arm" in lines 4 and 6; "the surface" line 4; "the open position" line 8; "the bottom edge", line 9. Note that the limitations "outer said arms, line 5, "said outer two arm supports, line 7 and "said outer arms" line 9 appear to be the same but not consistently recited through out the claim or claims.

Claim 2: "outside said arms " line 1, should be changed to --said outer arms --; "the ends", line 2.

Claim 3: "said arms " line 1, should be changed to --said outer arms --

Claim 4: "the center affixed said arm" should be changed to -- said center arm--.

Claim 5: "said arm" should be changed to --said center arm --

Claims 6-8: "said affixed arm", should be changed to --said center arm --.

Claim 5 recites " a predetermined amount of material removed" is unclear as to what amount specifically that Applicant has intended to be removed.

Claims 6-9 depend upon claim 5, these claims are also unclear as to how the center arm's movement can be stopped at approximately 80 degrees outwardly to establish a reclined position and how the hollow cylindrical shape that can limit the rotational movement of the hollow cylindrical shape (itself) approximately 90 degrees from the closed to open positions.

4. Claim 1, line 1, "M" shaped, should be changed to -- substantially M-shaped --

Claim 1, line 7, "framis" should be changed to --frame is --

Claim 6, "establishe" should be changed to --establish--

Claim 9, a hollow cylindrical shape" should be changed to --said hollow cylindrical shape --.

Claim 10, line 1, "or and " should be changed to either -- or -- or -- and --.

5. Note that the examiner has attempted to point out many of the typical terms and/or phrases which lack a clear antecedent basis in the claims and/or to point out those portions of the claims which include indefinite language which affects the intended meaning of the claim language. Applicant is urged to review each and every line of each and every claim to correct the above and to correct any other errors which applicant becomes aware of during the editing of the instant claims. Also, applicant

should scrutinize any new claims submitted to insure that the claims comply with the exacting requirements of the statute. See MPEP 2171+.

6. An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

Applicant is advised of the availability of the publication "Attorneys and Agents Registered to Practice Before the U.S. Patent and Trademark Office." This publication is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

### ***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,718,400 to Dwy.

As broadly as these claims recite, they read on a trash bag holder of Dwy as follows: a substantially M-shaped frame having three parallel arms comprising a center arm (24, 26, 32) and two outer arms (no numeral, part of the rectangular frame 12); two of outer arms are bent substantially an L-shaped and are substantially interconnected perpendicularly through ends of a rotational hollow cylindrical shape (28, 30); the center arm is perpendicularly affixed to the hollow cylindrical shape; the two outer arms extend to form curves ( both at corners 18, 20 and element 25) (which are capable of supporting a bottom edge of a book); and the center arm being shorter length than the two outer arms. The hollow cylindrical shape (28, 30) also has slots (39) (Fig. 9) formed in the cylindrical to set angle positions for the center leg (14) wherein positions can be adjusted by gripping elements 24, 26 of the center leg until screw 33 and 34 are clear of the slots. The center arm can be rotated between a closed position to an open position respectively from an angle 0 to 90 degrees and capable of folding by gripping the gripping elements 24, 26 of the center leg until screws 33 and 34 are out of the slot.

### ***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Dwy.

Dwy discloses substantially as claimed except that the material of the arms comprises of metal or alloy. However, to have selected the material out metal or alloy as being claimed is deemed to be obvious over Dwy because it was obvious that the material as selected may be made of any suitable material. Material selection is generally considered as a matter of choice and design.

### ***Conclusion***

9. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

5,738,315 to Kent, Jr.

5,413,394 to Mitchell

4,041,626 to Ellis et al.

5,918,907 to Ho


5,383,634 to Liao

The above patents are cited to disclose various types of support frames close to invention's structure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (703) 305-8244. The examiner can normally be reached on Mon. through Fri. from 9:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tan Le  
Patent Examiner  
September 30, 2004.